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THE SITUATION CONCERNING WESTERN SAHARA

Report by the Secretary-General

INTRODUCTION

1. In response to Security Council resolution 809 (1993) of 2 March 1993, I have already submitted two reports to the Council on 21 May 1993 and on 28 July 1993 respectively. 1/, 2/ The present report provides an account of the further efforts made by myself and my Special Representative since my last report in order to resolve the issues still standing in the way of the implementation of the settlement plan for Western Sahara. 3/ It is divided into four sections. Section I provides an update of the military aspects of MINURSO since my report to the Council of 26 January 1993. 4/ Section II reports on the civil police component of MINURSO. Section III covers all other aspects of the operation, including developments since the last report. 2/ Section IV contains my observations and recommendations.

I. MILITARY ASPECTS

2. As of 1 November 1993, the military component of MINURSO totalled 324 personnel, comprising 226 military observers and 98 military support personnel.

(a) United Nations military observers and headquarters personnel

Argentina	5
Australia	2
Austria	1
Bangladesh	7
Belgium	1
Canada	16
China	20
Egypt	8
France	30
Ghana	4
Greece	1
Guinea	1
Honduras	16
Ireland	5

Italy	6
Kenya	10
Malaysia	6
Nigeria	1
Pakistan	1
Poland	2
Russia	29
Switzerland	1
Tunisia	9
United States of America	30
Venezuela	14
Total	226

(b) Contingents

(1)	Signals unit: Australia	43
(2)	Movement control: Canada	14
(3)	Medical Unit: Switzerland	41
	Total	98
	Grand total	324

3. Brigadier-General André Van Baelen of Belgium continues to serve as Force Commander of MINURSO. His tour of duty was renewed on 1 October 1993 for an additional one-year period.

4. Pending the fulfilment of the conditions necessary for the commencement of the transitional period in accordance with the settlement plan, 3/ the military mandate of MINURSO remains restricted to monitoring and verifying the cease-fire in effect since 6 September 1991. Accordingly, the deployment of the military component of MINURSO continues to be limited to military observers and the necessary military support personnel.

5. Revised instructions for the monitoring and verification of the cease-fire came into effect on 1 April 1993. At separate meetings with the Force Commander, the military leadership of each party expressed their willingness to comply with these new and more detailed instructions.

6. Violations of the cease-fire were without exception of a non-violent nature and thus did not result in casualties on either side. Whereas a total of 50 violations were reported by MINURSO during the period August-December 1992, with 46 of them attributed to Morocco and 4 to the Frente POLISARIO, 4/ the number of confirmed violations for the period 1 January-1 November 1993 declined markedly to 23, with 12 attributed to Morocco and 11 to the Frente POLISARIO. Four of these violations were related to improvements of defensive works and 17 to unauthorized troop movements. During the latter period, the Frente POLISARIO has continued to file complaints of frequent Moroccan overflights, indicating that such flights remained a matter of grave concern. However, MINURSO's observations could confirm only two instances of air violation.

7. While there have been no incidents of explosions of mines involving MINURSO personnel during the past year, one such explosion caused the death of a young Saharan child and another injured a POLISARIO member. These unfortunate accidents demonstrate the serious hazards which minefields continue to pose.

8. The harsh desert conditions coupled with lack of infrastructure continue to entail considerable hardship for the military observers of MINURSO. Nevertheless, their living and working conditions have steadily improved, with the gradual installation of prefabricated camps. However, time, weather and terrain are taking a toll on MINURSO's equipment, including vehicles, generators as well as the camps. A major overhaul of MINURSO's logistics will therefore be required in the coming months.

9. Two serious accidents caused the tragic loss of four lives among MINURSO staff this year. On 18 January 1993, a MINURSO vehicle had a head-on collision with a local truck, resulting in the death of a military observer and injuring another. The second accident occurred on 21 June 1993, when a PC-6 aircraft belonging to the Swiss Medical Unit crashed while taking off from team site Awsard in the southern sector of the Territory. The Swiss pilot and two passengers, an Australian doctor and a Norwegian technician, died in the crash, while the third passenger, a Swiss nurse, was seriously injured.

10. I would like to take this opportunity to pay tribute to the military personnel of MINURSO for the contribution they have made to the maintenance of the cease-fire in Western Sahara. I also wish to express once more my deep appreciation to the Governments contributing military observers and support personnel, and to thank the two parties for the cooperation they have extended to the military component of MINURSO.

II. CIVIL POLICE

11. As of 1 November 1993, the Security Unit of MINURSO was composed of a first contingent of 26 police officers, including the Police Commissioner:

Austria	6
Belgium	5
Germany	5
Malaysia	5
Togo	5
Total	26

12. The Police Commissioner, Colonel Jürgen Friedrich Reimann (Germany), arrived in the mission area in early June 1993, followed by deployment of the Security Unit. The main responsibility of the security component of MINURSO will be to ensure that order is maintained in and around the identification and registration offices. Current activities of the police officers, who are on 24-hour standby at Laayoune and Tindouf, are complementary to the work of the Identification Commission and include coordination of logistics, technical and physical support.

III. POLITICAL ASPECTS

13. In paragraph 2 of its resolution 809 (1993), the Security Council called for an intensification of efforts in order to resolve outstanding issues, particularly those relating to the interpretation and application of the criteria for voter eligibility.

14. As previously reported, 2/ I presented to the parties, during my visit to the mission area from 31 May to 4 June 1993, a set of compromise proposals on the interpretation and application of the criteria for voter eligibility which my predecessor had enunciated in his report to the Security Council of 19 December 1991. 5/ While expressing reservations about the provisions relating to tribal links with the Territory, Morocco acquiesced in the compromise. In a letter to me dated 19 June 1993, the Frente POLISARIO, in expressing reservations about the fairness of the compromise, proposed several amendments to the provisions relating primarily to tribal links with the Territory and to the composition of the teams of tribal chiefs to be invited to testify.

15. In response to the parties' comments on the compromise proposals, and in a further attempt to allay some concerns and to reconcile, as far as possible, the positions of the parties, my Special Representative addressed a detailed explanatory note to the parties on 27 September 1993, clarifying certain provisions of the compromise text, in particular on the two main subjects of contention, tribal links with the Territory and the composition of the teams of tribal chiefs invited to testify. The Frente POLISARIO has nevertheless maintained its substantial reservations and proposals for amendments contained in its letter of 19 June 1993.

16. In her letter to me dated 4 August 1993, 6/ the President of the Security Council qualified as a "positive development" the holding of direct talks between the two parties in Laayoune from 17 to 19 July 1993 in the presence of my Special Representative. Encouraged by the interest shown by both sides and by the positive reaction of the Security Council, my Special Representative explored the possibility of the early resumption of such talks and invited further comments of the parties on the conditions and modalities for a second round. Ground rules for such a second round were laid down in a memorandum of understanding dated 27 September 1993 addressed by my Special Representative to the two parties. It was eventually agreed that the talks would be resumed on 25 October 1993 in New York. While the memorandum of understanding gave to each party the right to choose the composition of its delegation, the presence of former POLISARIO officials in the Moroccan delegation was not considered by the Frente POLISARIO to be conducive to a propitious climate for dialogue. Under the circumstances, the meeting could not take place as scheduled. Subsequently, I had separate meetings with the representative of Morocco and the Coordinator of the Frente POLISARIO with MINURSO. Efforts will continue to bring the parties together for direct talks under mutually acceptable conditions.

17. In paragraph 3 of its resolution 809 (1993), the Security Council further asked for preparations for the holding of the referendum of self-determination of the people of Western Sahara and urged that voter registration commence promptly, starting with the updated lists of persons included in the 1974 census.

18. After arriving in the mission area towards the end of May 1993, the Chairman of the Identification Commission, Mr. Erik Jensen, and his team have held intensive discussions with the parties on modalities which would enable identification and registration to proceed in a thorough and judicious manner. They have also made essential arrangements for voter registration both in Western Sahara and in the Tindouf area and undergone training in the use of specialized equipment and related techniques. Since both parties are of the view that some of the procedures to be adopted are likely to influence, if not determine, the eventual outcome of a referendum, it follows that matters, which may appear to be merely procedural, are perceived by the parties as critically important.

19. Immediately following the direct talks at Laayoune from 17 to 19 July 1993, the Chairman was able to present to both parties a proposed outline of a work programme and a draft registration form. These were subsequently agreed by the Frente POLISARIO, with only minor suggested modifications, on condition that identical and simultaneous action be taken on both sides. The Government of Morocco, while initially inclined to accept the proposals, later expressed reservations on some aspects. After completing another round of discussions, the Chairman presented further firm proposals to both parties, including a revised timetable for the initial stages and a new registration form in Arabic-French and Arabic-Spanish versions.

20. On 17 October 1993, the Chairman addressed a letter to the Government of Morocco and the Frente POLISARIO, confirming conversations in the course of which the revised timetable had been agreed. In his letter, he confirmed that the start of the operations would be announced on 1 November 1993 and that during the following days the population would be informed of the launching of the registration operations, the revised lists of the 1974 census and the instructions for registration would be published and made available to the population, and the registration forms would be distributed. The offices having been opened, forms would be accepted as of 8 December, followed by the classification and preliminary analysis of the forms. The mobilization of the observers and the sheikhs concerned would take place in time for identification to begin on 7 January 1994.

21. The launching of the process leading to identification and registration was officially announced on 3 November 1993. The Special Representative visited the mission area from 1 to 6 November 1993 to further the process and inspect sites selected as registration and identification offices. But problems connected with the formation of a new Moroccan government, named on 11 November 1993, delayed the publication of the revised lists of the 1974 census. Meanwhile, the Identification Commission prepared a supplement to the revised lists, adding the names of those individuals excluded from the 1991 revision because they had not reached 18 years of age at that time. On 19 November 1993, following a series of meetings with the Identification Commission, the Moroccan authorities agreed to implement the initial stages foreseen in the established programme described in the preceding paragraph. As finally agreed, the revised lists of the 1974 census were announced and made accessible to the population in Laayoune on 22 November. On the same day, the Frente POLISARIO, which had indicated its readiness to begin the process as soon as similar action was taken on the Moroccan side, took steps, in consultation with the Identification Commission, to make the revised lists available to the population in one refugee camp. It

was further agreed with the Moroccan authorities that the registration forms would be distributed on 29 November 1993. According to indications received, similar action would be taken by the Frente POLISARIO on that date.

22. Arrangements have been made in consultation with the parties to provide guarantees entitling the tribal chiefs and the observers from both parties to the privileges and immunities necessary for the independent exercise of their functions for the Identification Commission. In consultation with the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity, further arrangements are in hand for the participation of OAU observers in the work of the Identification Commission, in accordance with the settlement plan. 3/

IV. OBSERVATIONS

23. As previously reported, 2/ the efforts made subsequent to Security Council resolution 809 (1993) have led to the acceptance by the Frente POLISARIO of all the criteria for voter eligibility enunciated by my predecessor, thus signifying a favourable change in the earlier position of the Frente POLISARIO which had consistently objected to several of these criteria. But the deadlock has since shifted to their interpretation and application. While now also accepting oral testimony in support of individual applications for participation in the referendum, the Frente POLISARIO maintains substantial reservations on some other key provisions of the proposed compromise on the interpretation and application of the criteria for voter eligibility, and requests amendments to the text. On the other hand, the Moroccan party stresses that, in spite of its reservations, it has acquiesced in the compromise in view of the authority vested in the Secretary-General by the settlement plan, and rejects any attempt at modifying the compromise text in its present form.

24. It is useful to recall that the essential aim of the proposals to which Morocco and the Frente POLISARIO agreed in principle in August 1988, as the basis for the settlement of the Western Sahara conflict, was "to enable the people of Territory of Western Sahara to exercise their right to self-determination and independence," in accordance with United Nations General Assembly resolutions 1514 (XV) of 14 December 1960 and 40/50 of 2 December 1985 and resolution AHG/Res. 104 (XIX) adopted by the Assembly of Heads of State and Government of the Organization of African Unity in 1983. 3/ It may be noted that none of these resolutions offers a precise definition of "a people" for the purpose of exercising this right.

25. In the case of Western Sahara, the problem of defining its people is compounded by the characteristics of Saharan society. As stated in the annex to the report of 19 December 1991, "the Saharan society remains for the most part a society structured around tribal membership, each tribe being subdivided in fractions, subfractions, and family groups (ahels). Some of these tribes extend beyond the borders of Western Sahara. [...] In view of the close affinity which exists between Saharans living within the Territory and those in neighbouring countries and also of their nomadic tradition, the question of determining who is and who is not an indigenous inhabitant of the Territory is a somewhat complex matter. That complexity notwithstanding, it is clear that only members of tribes whose connection with the Territory within the limits of

recognized international borders is clearly established should participate in the referendum." With these considerations in mind, the instructions in the same annex stipulated that "it is the membership of a family group (subfraction of a tribe) existing in the Territory, which can be attested to by the sheiks and notables of the family group, that should eventually prevail for eligibility to participate in the referendum." 5/

26. Both parties agree that membership of a Saharan subfraction existing in the Territory is a prerequisite to eligibility under any of the five pertinent criteria. However, they disagree over which tribes or tribal units have a "clearly established" connection with, or are "existing" in the Territory. While the linkage of a number of Saharan tribes with the Territory is uncontested by either party, it is not so with regard to several others. Morocco is of the view that, because of historical circumstances which prevailed among Saharan tribes in the region, in particular in the territories of Western Sahara and Morocco, members of all subfractions of a given Saharan tribe should be considered, a priori, for participation in the referendum, including those of subfractions which were not represented in the 1974 census. The Frente POLISARIO holds the view that, unless the vast majority of the members of a given subfraction were counted in the 1974 census, that subfraction should not be considered as existing in the Territory, and its members other than those already counted in the 1974 census should not be eligible therefore to participate in the referendum. 4/

27. As a compromise, I have proposed that the potential electorate encompass members of all the Saharan tribal subfractions, but only those, which were represented in the 1974 census, regardless of the number of individuals from these subfractions who were counted in the 1974 census. 7/ All applicants for participation in the referendum would have to cross this first hurdle before claiming eligibility to vote under any of the pertinent criteria. This proposal, which takes the 1974 census as the agreed benchmark, is in my view a sound point of departure for determining potential participation in the referendum, in the absence of a precise and undisputed definition of a "people of Western Sahara" and of an agreement on which specific Saharan tribal units are linked with the Territory. The Frente POLISARIO does not agree with this compromise, as it remains concerned about the possible inclusion, in the electorate, of members of some tribal units which it does not consider as existing in the Territory.

28. Paragraph 3 of Security Council resolution 809 (1993) calls for identification and registration to be focused, in an initial phase, on the 1974 census lists. It is clear, however, that the identification and registration of potential voters cannot proceed beyond a certain point unless the particular problem of linkage with the Territory is settled. For practical purposes, the identification of potential voters and their registration in the final electoral list should be conducted by tribal units, in the presence of their respective sheikhs. It would be more economical in time and effort, and more in accordance with the provisions of the settlement plan, to identify all potential voters from a given tribal unit simultaneously, rather than repeating the exercise in successive phases, especially if many applications had initially to be set aside pending agreement on the interpretation of the criteria. In addition, as the operation has to take place inside as well as outside the Territory, in the presence of the sheikhs concerned, a simultaneous approach would be logistically

more efficient and less likely to cause irregularities and confusions such as double entries in registration.

29. In agreeing in principle to the settlement proposals in August 1988, the two parties gave the United Nations in cooperation with the Organization of African Unity the exclusive authority and responsibility to organize and conduct a referendum which would enable the people of Western Sahara to determine their future. In this spirit, the General Regulations for the Organization and Conduct of the Referendum issued on 8 November 1991 stipulate that "any serious implementation difficulty or divergence of views concerning the interpretation of the settlement plan or these General Regulations that may arise between the authorities of MINURSO and the parties or one of the parties shall be settled by the Secretary-General of the United Nations, after recourse to the Special Representative." 8/ In the preamble of its resolution 809 (1993), the Security Council recalled that "it is for the Secretary-General to determine the instructions for the review of the applications for participation in the referendum and that the Council welcomed in its resolution 725 (1991) the report of the Secretary-General dated 19 December 1991 (S/23299)." It follows that acceptance by both parties of the role of the Secretary-General as guarantor of an objective and impartial referendum is central to the operation. At the same time, it is clear that should either party disagree with any instructions by the Secretary-General for giving effect to the provisions of the settlement plan, it might choose not to participate in its implementation.

30. In paragraph 4 of its resolution 809 (1993) the Security Council asked me to report on the prospects and modalities for the holding of the referendum on a free and fair basis with a view that this take place by the end of the current year at the latest. In view of the remaining difficulties explained in this report, it is obviously not possible to meet this expectation. On the assumption that these remaining difficulties are settled and that progress is made in the initial stages of the registration process, I hope to be able to submit a report to the Council early next year, together with a detailed timetable and recommendations for the necessary adjustments to the present strength of MINURSO, with a view to holding the referendum in mid-1994. I would like to point out, however, that any estimated date set at this stage still bears little meaning unless both parties demonstrate a spirit of cooperation and forbearance without which the implementation of the settlement plan would continue to evade us. I propose to maintain the existing military and civilian strength of MINURSO until my next report.

Notes

1/ S/25818.

2/ S/26185.

3/ S/21360 and S/22464.

4/ S/25170.

5/ S/23299, annex.

6/ S/26239.

7/ S/26185, annex I.

8/ Ibid., annex III, regulation 26.